

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW CARL HARVEY,
Plaintiff,
v.
PURTLE, et al.,
Defendants

No. 2:20-cv-01363-JAM-CKD

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 22, 2021, the magistrate judge filed findings and recommendations herein which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within twenty-one days. Plaintiff has not filed objections to the findings and recommendations.

The court presumes that any findings of fact are correct. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the magistrate judge's analysis.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The findings and recommendations filed April 22, 2021, are adopted in full; and
- 3 2. Plaintiff's First Amendment retaliation claim against defendant Purtle is dismissed
- 4 without further leave to amend.
- 5 3. This case is proceeding on the Eighth Amendment excessive force claim against
- 6 defendant Purtle and the failure to protect claim against defendant Thomas.

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8 DATED: June 28, 2021

9 /s/ John A. Mendez

10 THE HONORABLE JOHN A. MENDEZ
11 UNITED STATES DISTRICT COURT JUDGE

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